IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA GUILES,	:	CIVIL ACTION
	:	NO. 00-5029
Plaintiff,	:	
	:	
v.	:	
	:	
METROPOLITAN LIFE INSURANCE CO,	:	
	:	
Defendants.	:	

Memorandum and Order

AND NOW, this **9th** day of **November, 2001**, upon consideration of defendant's motion for summary judgment (doc no. 19) and plaintiff's response in opposition to motion for summary judgment (doc. no. 22), it is hereby **ORDERED** that the defendant's motion for summary judgment (doc. no. 19) is **GRANTED**. The court's order is based on the following reasoning:

On June 4, 1998, Lisa Guiles (formerly Lisa Mowrer) filed a complaint against her employer, Warner-Lambert, claiming that it had violated her rights under the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. and the Pennsylvania Human Relations Act ("PHRA"), 42 Cons. Stat. Ann. §951 et seq. This court dismissed the action with prejudice pursuant to a settlement agreement on June 2, 1999. On July 13, 2000, this court entered an order granting Warner-Lambert's motion to enforce the settlement agreement. See Mowrer v. Warner-Lambert Co., Civ. A. No. 98-2908, 2000 U.S. Dist. LEXIS

9874 (E.D. Pa. July 13, 2000). The oral settlement agreement provided that in exchange for $2,000, Guiles would release "any" and "all" claims against Warner-Lambert. Guiles sought reconsideration of the court's July 13, 2000, order, and the court denied that motion for reconsideration on August 11, 2000. Guiles did not appeal this court's decision, and the time for an appeal lapsed on September 10, 2000.

Guiles subsequently filed this action on October 10, 2000, against defendant Metropolitan Life Insurance Co. ("MetLife"), asserting violations of the Employee Retirement Income Security Act of 1974 ("ERISA") for the denial of disability benefits. Upon Guiles' motion, unopposed by MetLife, Guiles joined the Warner-Lambert defendants[1] in this action on May 18, 2001. On July 9, 2001, counsel for defendant Warner-Lambert mailed a check to Guiles for $2,000, in satisfaction of the settlement agreement. Guiles refused the check and returned it to Warner-Lambert.

Defendants contend that the present suit is barred by the doctrine of res judicata. For res judicata, or claim preclusion, "a defendant must demonstrate that there has been (1) a final judgment on the merits in a prior suit involving (2) the

1. Warner-Lambert Company, Warner-Lambert Investment Committee ("Investment Committee"), Warner-Lambert Short Term Disability Plan ("STD Plan") and Warner-Lambert Long Term Disability Plan ("LTD Plan").

same parties or their privies and (3) a subsequent suit based on the same cause of action." Lubrizol Corp. v. Exxon Corp, 929 F.2d 960, 963 (3d Cir. 1991). Issues of claim preclusion in the federal courts are governed by federal law. See Berwind Corp. v. Apfel, 94 F. Supp. 2d 597, 608 (E.D. Pa. 2000) (citing Burlington Northern Railroad Co. v. Hyundai Merchant Marine Co., Ltd., 63 F.3d 1227, 1231 (3d Cir. 1995) (applying federal law principles of issue preclusion when examining the issue preclusive effect of a prior federal court action)).

Guiles' previous suit in this matter, Mower v. Warner-Labmert Co., Civ. A. No. 98-2908, was dismissed with prejudice pursuant to the settlement agreement. A judgment entered with prejudice pursuant to a settlement is a final judgment on the merits for the purposes of res judicata. See Langton v. Leblanc, 71 F.3d 930, 925 (1st Cir. 1995); Bieg v. Hovnanian Enterprises, Inc., Civ. A. No. 98-5528, 1999 U.S. Dist. LEXIS 17387 at *7-8 (E.D. Pa. Nov. 9, 1999).[2] Thus, the first element of res

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2. The plaintiff cites Frantz v. Northeast Commuter Services Corp., Civ. A. No. 97-6631, 1998 U.S. Dist. LEXIS 22764 at *12 (E.D. Pa. Nov. 17, 1998), in which the court held that under the doctrine of res judicata, a dismissal pursuant to a settlement agreement did not bar a subsequent action between the parties. In Fratz, following a suit in 1989 by the plaintiffs, a nonprofit organization and several of its members, the plaintiffs and the defendant, SEPTA, had entered a settlement agreement that let the plaintiffs distribute literature at various subway stations, subject to certain limitations. See id. at *4-7. As a result of the settlement, the court dismissed the original suit pursuant to Local Rule 23(b) (now Local Rule 41.1(b)). See id. at *3. The (continued...)

judicata has been satisfied, as the first action had been dismissed by the court pursuant to a settlement agreement.

With respect to the second element, res judicata applies if there is privity or an otherwise close or particular relationship between parties. See Bruszewski v. United States, 181 F.2d 419, 422 (3d Cir. 1950); Williams v. City of Allentown, 35 F. Supp.2d 599, 603 (E.D. Pa. 1998); Avins v. Moll, 610 F. Supp. 308, 316 (E.D. Pa. 1984). Warner-Lambert is a named defendant in both actions, and thus with respect to Warner-Lambert, the second element has been satisfied.

The defendants argue that the second element has also been satisfied with respect to the other Warner-Lambert defendants, the Investment Committee, the LTD Plan and the STD Plan. The Investment Committee is comprised solely of officers

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2. (...continued)
plaintiffs brought a second action in 1997 alleging that SEPTA had restricted its First and Fourteenth Amendment rights. SEPTA argued that the second action was barred as a result of the resolution of the first suit. See id. at *10-11. The court found that since the stipulation was a private agreement, the stipulation could not bar a subsequent suit. See id. at *12. Nevertheless, the instance case is distinguishable from Frantz. In Frantz, the plaintiffs' subsequent claims were not based on the conduct at issue in the original case, but on more recent conduct of SEPTA. See id. at *11 n.6. Thus, the plaintiffs did not seek to relitigate claims released by the settlement agreement, but to bring new claims of SEPTA's alleged unconstitutional actions that had occurred after the settlement. In this case, however, Guiles seeks to raise claims that were (or should have been) the subject of the original lawsuit and that were released in the settlement agreement. When the original lawsuit was dismissed with prejudice, that was a final judgment on the merits with respect to the plaintiff's claims.

of Warner-Lambert, who were appointed by the Retirement and Savings Plan Committee, which, in turn, was appointed by Warner-Lambert's Board of Directors and comprised exclusively by members of Warner-Lambert's Board. Thus, argue defendants, since the Investment Committee is merely a committee of Warner-Lambert, it is the same party, or, at the least, has an "otherwise close or particular relationship" with Warner-Lambert. See Smith v. Ameritech, 130 F. Supp.2d 876, 882 (E.D. Mich. 2000) (stating that an earlier action against Ameritech precludes a subsequent claim against Ameritech, as well as two committees within Ameritech, Ameritech Benefit Plan Committee and Ameritech Employees' Benefit Committee).

Additionally, defendants argue that Guiles' attributes no unlawful conduct to the STD Plan or LTD Plan, and that the STD Plan and LTD Plan are merely nominal defendants. In Slaughter v. AT&T Information Systems, Inc., 905 F.2d 92 (5th Cir. 1990), an action against an employer and ERISA plan, the court held that res judicata precluded a second lawsuit even though the ERISA plan was not a party to the first suit. The court determined that the ERISA plan had no existence apart from the employer and was merely a nominal defendant in the action. See id. at 94. Furthermore, the court found that the entity from which plaintiff really sought recovery was her former employer, and not the plan. See id. In this action, the Warner-Lambert defendants argue

that all of the allegations of wrongdoing are directed at Warner-Lambert, not the STD Plan or LTD Plan, which have no existence apart from Warner-Lambert. Since Warner-Lambert is protected by res judicata, so too should the STD Plan and LTD Plan be protected.[3]

Finally, whether a subsequent suit is based on the same cause of action, "turns on the essential similarity of the underlying events giving rise to the various legal claims." Churchill v. Star Enterprises, 183 F.3d 184, 194 (3d Cir. 1999). The Third Circuit takes a broad view of what encompasses the same cause of action, "focusing on the underlying events of the two actions." Id. Additionally, the identity of the cause of action refers not only to claims actually litigated, but to those that could have been litigated in the earlier suit if they arise from the same underlying transaction or events. See Lubrizol, 929 F.2d at 964; Biege, 1999 U.S. Dist. LEXIS 17387 at *9. Courts

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3. Plaintiff contends that because the employee benefit plans, the STD Plan and LTD Plan, may be sued as separate entities under ERISA, 29 U.S.C. § 1132(d), they are separate parties for res judicata purposes. That ERISA provides that they may be sued as separate entities, though, does not require that they must be separate for res judicata purposes. If the benefit plan is provided by the employer and is internal to the employer, than that fact would create the close or particular relationship with the party in the original action that would satisfy the second res judicata element. As the defendants noted during the hearing on their motion for summary judgment, employee benefit plans may not always have the close or particular relationship with the employer that is necessary for res judicata purposes. If the benefit plan is an independent third party plan, then claim preclusion would not necessarily apply.

consider the similarity of the acts complained, the material factual allegations in each suit and the witnesses and documentation required to prove each claim. See Lubrizol, 929 F.2d at 963.

Defendants contend that even though the suits allege different claims, they arise from the same underlying transaction and events, specifically, Guiles' disability and termination from employment. Thus, even though the cases stem from different theories – an ADA claim in the first action and an ERISA claim in the second – that fact does not defeat the applicaiton of res judicata. See Churchill, 183 F.3d at 195; Protchotsky v. Baker & McKenzie, 966 F.2d 333, 334-35 (7th Cir. 1992). But see Hermann v. Cencom Cable Assocs., Inc., 999 F.2d 223 (7th Cir. 1993) (determining that Title VII claim and COBRA claim were not same cause of action where claims involved different factual allegations). In Protchotsky, the court determined that the plaintiff's Title VII claim, alleging termination based on her age, gender and national origin, was barred based on her prior claim alleging that she was terminated based on her employer's desire to deny her employee benefits. See id. The court determined that in both cases the plaintiff alleged that her employer had illegitimate motives in discharging her, and thus the two claims shared the same cause of action. See id. at 335. The current case involves the same allegations as the ERISA

action in Protochotsky, in that the plaintiff was discharged in order to deny her disability benefits. Both the current case and Protochostky, however, differ from Hermann in that the plaintiff's Title VII claim in Hermann arose from the employer's pre-discharge conduct, while the plaintiff's COBRA claim concerned the post-discharge processing of the plaintiff's request for continued benefits. See Hermann, 999 F.2d at 227.

Furthermore, because the court in its July 13, 2000, memorandum found that Mowrer had discussed her desire to pursue her claim for disability benefits with her original attorney in the original suit, see Mowrer, 2000 U.S. Dist. LEXIS at *4, she could have alleged that Warner-Lambert terminated her employment both to discriminate against her based on her disability and to deny her disability benefits in violation of ERISA. She decided not to bring the ERISA claim at that time, instead seeking to raise that claim in the present suit. Plaintiff's course of litigation is an impermissible splitting of claims. See Churchill, 183 F.3d at 195.

Thus, the plaintiff's claim in the current action involves the same cause of action as her previous case. All three elements of res judicata have been met, and therefore, the her action should be dismissed against the Warner-Lambert defendants.

There is an additional reason why defendants' motion for summary judgment shall be granted. The defendants argue that the claim against them is barred by the settlement agreement. The plaintiff, however, contends that Warner-Lambert failed to live up to its end of the settlement agreement by reasonably tendering the $2,000 owed to the plaintiff. Plaintiff argues that since Warner-Lambert did not perform pursuant to the settlement offer by tendering the $2,000 until July 9, 2001, the contract was not performed in a reasonable time and thus it is not longer valid.[4]

In order to determine whether the settlement agreement, which resolved the first action and was found enforceable by the court, is valid, the court must construe the agreement pursuant

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4. In her memorandum of law in opposition to defendants' motion for summary judgment, the plaintiff confuses the formation of a contract with Warner-Lambert's failure to perform under a valid contract. Citing Cawthorne v. Erie Insurance Group, 2001 Pa. Super. 247, plaintiff argues that there was an offer for settlement, but that Warner-Lambert did not accept that offer "in the mode and manner expressly provided by the terms of the offer," in other words, by tendering payment of $2,000. Nevertheless, the court determined in its July 13, 2000, findings that there was an effective settlement agreement between the parties. Warner-Lambert had made an offer, and that offer was accepted by Guiles' attorney, who had express authority to accept it. Thus, a valid contract had been formed, requiring the defendant to tender $2,000 in return for plaintiff's confidentiality and release of defendant from any and all claims arising out of her employment. Both Cawthorne and Yaros v. Turstees of University of Pennsylvania, 1999 Pa. Super. 303, 742 A.2d 1118 (Pa. Super. 1999), also cited in plaintiff's memorandum, are distinguishable, as both address whether an offer to settle was validly accepted.

to the traditional principles of contract law. See Wilcher v. City of Wilmington, 139 F.3d 366, 372 (3d Cir. 1998). Accordingly, Pennsylvania contract law applies to this issue. See Nice v. Centennial Area School Dist., 98 F. Supp. 2d 665, 668 (E.D. Pa. 2000) (determining that where federal law does not establish a rule of decision and where state law is well-developed and will not impinge on a local interest, the court may "borrow" state law to fill the gap in the federal statutory scheme).

The settlement agreement provided that Guiles would release Warner-Lambert from any and all claims and keep the agreement confidential, and Warner-Lambert would pay Guiles $2,000. Until July 9, 2001, neither party had performed pursuant to the contract. The plaintiff had not signed the written release, and Warner-Lambert had not tendered the payment. Plaintiff, though, contends that Warner-Lambert's failure to perform repudiated the contract, and thus the contract is not enforceable against her. A party who has materially breached a contract, however, may not later complain if the other party refuses to perform its obligations under the contract. See Ott v. Buehler Lumber Co., 373 Pa. Super 515, 541 A.2d 1143 (Pa. Super. 1988). See also Nikole, Inc. v. Klinger, 412 Pa. Super. 289, 302, 603 A.2d 587, 593 (Pa. Super. 1992). The plaintiff may not, as having not performed herself pursuant to the oral

agreement, seek to invalidate the agreement based on the defendant's failure to perform adequately.

For the reasons stated above, defendant's motion for summary judgment is granted.

AND IT IS SO ORDERED.

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EDUARDO C. ROBRENO, J.